

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4684 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

I. U. PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SMITA A SHAH for Petitioner

M/S A & D for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/06/96

ORAL JUDGEMENT

Heard learned counsel for the parties. This case has a checkered history, but looking to the fact that the controversy arising in this writ petition is a short one, it is not necessary to make this judgment bulky by giving all the detailed facts of the case. The facts which are necessary to appreciate the controversy, which has arisen in the present case are taken in brief as under:

2. The petitioner entered in the service of Police department of the Bombay State in the year 1957. After the formation of Gujarat, he has come in the state of Gujarat. In the year 1958, the petitioner was chargesheeted for delinquency and he was placed under suspension and ultimately he has also been dismissed from service. The said dismissal has been challenged by the petitioner and it appears that the said dismissal has been set aside by this Court and the petitioner was ordered to be reinstated in the service and accordingly he was reinstated in the service on 6.11.65. But the respondent has taken decision to hold de novo inquiry against the petitioner under its order dated 14.10.66 and had again placed the petitioner under suspension, which led to again filing second Special Civil Application No.355 of 1968 before this Court. This writ petition was only restricted to the order of suspension and the prayer for payment of arrears of salary and allowances till the date of reinstatement, i.e. 16.11.65. This writ petition has been allowed on agreement. It was ordered under this Special Civil Application that the salary and other arrears were to be paid in two months and further inquiry was to be completed as early as possible. Though the inquiry was completed by taking a long time, a punishment of compulsory retirement has been given to the petitioner. He filed an appeal before the State Government and on 19th May, 1975, the appeal was allowed and the order of compulsory retirement has been substituted with a minor penalty of reduction of pay by Rs.30/- p.m. for a period of one year without future effect. The period of suspension was treated as such and the period of compulsory retirement was treated as leave without pay. That part of the order of the concerned authority led to filing of Special Civil Application No.1479 of 1975 by the petitioner, which was partly allowed and the State Government was directed to pass a fresh order regarding the period of suspension and compulsory retirement. After this decision, the petitioner has come up with the case that a part of his grievance was accepted as he was treated on duty throughout, and as such he was entitled to all the promotions that would have been available to him during this period and which the Government should have granted him though he had retired from the service, with effect from 31.5.78. The petitioner made a representation and gave notice, but no step has been taken by the respondents and as such he approached this Court by filing Special Civil Application No.1013 of 1980. It appears that the petitioner made twofold prayers in the said Special Civil Application, firstly, for the payment

of salary and emoluments from the year 1966 to 1975 and secondly for a direction to the respondents to consider his case for promotion from the date when his juniors were promoted in the year 1963-64 with all consequential benefits. The petitioner has given out that Shri R.S. Patel, Shri C.V. Rathod, and Shri R.S. Chauhan, who are juniors to the petitioner, were promoted as Deputy Superintendent of Police under the order dated 18.5.63. In the said writ petitioner, the respondents admitted that they have decided to treat the petitioner as promoted to the post of Deputy Superintendent of Police from April 1977, till his retirement from 31.5.78.

3. The Special Civil Application No.1013 of 1980 was decided by this Court on 23rd March, 1982, i.e. after the date of giving promotion to the petitioner on the post of Deputy Superintendent as well as after his retirement. This Court has passed the order which reads as under:

"Respondents No.1 and 2 are therefore directed that they may consider on whatever record of service the respondents had of the petitioner as to whether the petitioner was fit to be promoted as Dy.S.P. in May 1963 when his junior colleagues were promoted to the post of Dy. S. P. or thereafter whenever the promotions were made to the said post and in case respondents No.1 and 2 come to the conclusion that the petitioner was entitled to be promoted in May 1963 or thereafter to the post of Dy.S.P. they shall give him the promotion accordingly and give him all the monetary benefits to which he would be entitled to if he had been promoted according to that decision."

In pursuance of the order of this Court aforesaid, the case of the petitioner was decided by the respondents under order dated 23rd August, 1982. In Para-4 of the said order, the respondent has stated that the case of the petitioner has again been considered for promotion but did not consider him fit for promotion prior to 1st April, 1978. No reasons whatsoever have been given by the respondent why the petitioner was not considered fit for promotion prior to 1st April, 1978. When this Court has decided the matter and a specific direction has been given to consider the case of the petitioner for promotion with effect from May 1963 on the basis of whatever record of service of petitioner was there, the respondent should have passed a speaking/reasoned order, which precisely has not been done in the present case. During the course of argument also, the learned counsel

for the respondent has failed to give out any adversity which justifies the denial of promotion to the petitioner on the post of Dy. Superintendent in May 1963 when his juniors were promoted. The counsel for the respondent has contended that the adversity is of penalty which has been given to the petitioner of reduction of his pay of Rs.30/- p.m. under the order dated 17th May, 1975. This adversity was not there in the service record of the petitioner in the year 1963. I have gone through the contents of reply filed by respondent to this Special Civil Application and therein also, no reasons have been given to justify their decision as contained in annexure 'D', order dated 23rd August, 1982. The case of the petitioner was to be considered on the basis of record whatever available in May 1963 and the respondents have failed to give out any adversity in the service record by that time. Now, the only question remains that whether on the basis of adversity, i.e. the order of penalty dated 19th May, 1975, the petitioner's case could have been rejected for promotion on the post of Dy. Superintendent in the year 1963. This Court has decided the earlier petition of the petitioner wherein he challenged his suspension and dismissal for delinquency during 1960s and thereafter he has been reinstated and promotion has also been given from 1st April 1977. Even if the adversity, i.e. punishment relate back to the date of incidence, then too, I fail to see any justification in the action of the respondents to reject the petitioner's claim for deemed date of promotion from May 1963. When the respondent has considered the petitioner to be fit for promotion within less than two years from the date of order of penalty, how this adversity can be taken into consideration to deny him promotion from the deemed date, May 1963. Not only this, from reading of the order of this Court which has been passed in the earlier petition, this adversity could not have been taken into consideration. The case of the petitioner for promotion has to be considered from May 1963 on the basis of whatever record available on that date. In the net result of discussion made above, it is clear that the order of this Court dated 23rd March, 1982 has not been complied with in spirit and the manner as desired. The claim of the petitioner for promotion from May 1963 on the post of Dy. Superintendent has arbitrarily been rejected. His case was not fairly and properly considered. In the absence of any adversity in his service record which the respondent has failed to point out, the petitioner should have been given promotion. In the result, this Special Civil Application is allowed and the order dated 23rd August, 1982, denying the promotion to the petitioner from May 1963 on the post

of Dy. Superintendent, is set aside. The respondents are directed to consider the case of the petitioner for promotion from May 1963 on the post of Dy. Superintendent, within a period of three months from the date of receipt of certified copy of this order. All consequential benefits arise therefrom to be given to the petitioner within two months thereafter. Rule is made absolute in aforesaid terms.

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(sunil)